

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES TYTIUS TARVER,

Defendant-Appellant.

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UNPUBLISHED

May 26, 2009

No. 283654

Wayne Circuit Court

LC No. 07-012991-FH

Before: Fitzgerald, P.J., and Talbot and Shapiro, JJ.

PER CURIAM.

Defendant was convicted, following a bench trial, of three counts of possession with intent to deliver less than 50 grams of controlled substances, two involving heroin and one involving cocaine, MCL 333.7401(2)(a)(iv), and one count of possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant to serve concurrent sentences of two years' imprisonment for felony-firearm, and five years' probation for each drug conviction. Defendant appeals as of right. We affirm.

In delivering its verdict, the trial court included the following statements from the bench:

On July 11<sup>th</sup>, 2007, at approximately 1:45 P.M., Detroit Police Narcotics Officer Donell Holyfield was conducting surveillance in the vicinity of 7544 Nuernberg Street in the City of Detroit, . . when he observed the Defendant walking westbound on the south side of Nuernberg.

. . . Officer Holyfield then saw the Defendant flag down a dark color Jeep vehicle, which pulled over to the curb and stopped.

The Defendant and the passenger in the Jeep[] engaged in a brief conversation and Officer Holyfield observed the transfer of what appeared to be . . . green currency going from the passenger to the Defendant.

The Defendant was then observed by Officer Holyfield to throw up two fingers as a signal to Co-defendant Loyd who was across the street.

Loyd went to the rear of the vacant dwelling located across the street and returned to the curb on the north side of Nuernberg.

The hand gestures by the Defendant were believed by police officers observing . . . to indicate a narcotics transaction.

The Jeep in the meantime had traveled east to the end of the block on Nuernberg, made a U-turn and returned to the front of the vacant house where the Defendant Loyd was standing at the curb.

Defendant Loyd was observed by Officer Holyfield to hand something to the passenger of the Jeep in a hand to hand exchange which he believed to be a narcotics transaction . . . .

\* \* \*

The raid and arrest team proceeded . . . immediately to the Nuernberg location. . . .

The . . . Jeep was immediately stopped . . . by the arrest team . . . . [T]he passenger . . . had six Lotto packets of suspected heroin contained in her right hand. . . .

The Defendant was intercepted and stopped on Nuernberg by Police Officer Cedric Coleman. . . . He . . . verbally indicated to Officer Coleman that he had a C.C.W. permit.

Officer Coleman searched the Defendant and confiscated a loaded caliber forty-five semiautomatic pistol containing seven live rounds from Defendant's right pants pocket, and some paper currency in the left pocket.

\* \* \*

The amount of cash seized from the Defendant . . . was \$702.00 consisting of 1 one hundred dollar bill, three fifty dollar bills, 20 twenty dollar bills, 3 ten dollar bills, and 2 one dollar bills.

Based on the number of twenty dollar bills, the officers involved believed the cash to be drug proceeds.

. . . [A]nother member of the arrest team . . . went to the rear of 7545 Nuernberg, the location where the Defendant Loyd had been observed to go and return to the street, and recovered twenty Lotto packages containing what later was determined by a lab as heroin . . . and a [k]notted plastic baggie of what was later determined by the lab to be cocaine . . . .

The heroin and cocaine found at the rear of 7545 Nuernberg was packaged for sale. The Defendant actively aided and abetted Defendant Loyd in possession with intent to deliver and sell heroin, a controlled substance, by his flagging down the vehicle, receiving money from the passenger of the Jeep and directing Defendant Loyd to secure the heroin from a stash for delivery . . . .

\* \* \*

The Defendant constructively possessed cocaine . . . with Defendant Loyd, and intended that the cocaine was to be sold and delivered to someone else.

On appeal, defendant characterizes the verdict as both insufficiently supported by the evidence and contrary to the great weight of the evidence, and presents argument conflating those theories. However, regardless of the rubric under which the challenge is presented, a trial court's factual findings are reviewed for clear error. MCR 2.613(C); see also *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991). "A finding is clearly erroneous if, after a review of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made." *Id.* "Credibility is a matter for the trier of fact to ascertain. We will not resolve it anew." *People v Vaughn*, 186 Mich App 376, 380; 465 NW2d 365 (1990).

Defendant describes the evidence that a police officer observed what appeared to be currency passing from the occupant of the Jeep to defendant as "sketchy at best," and argues that the attendant conversation had to do with a request for directions, and that the hand gesture was not a signal to a drug courier but was instead a greeting to a neighbor. However, Officer Holyfield was unequivocal in testifying that what changed hands was United States currency. See *People v Jelks*, 33 Mich App 425, 432; 190 NW2d 291 (1971) (the accounts of a single witness can suffice to persuade a jury of a defendant's guilt beyond a reasonable doubt). As for defendant's innocent explanations for why a conversation took place, or why any gesture on his part followed, we bear in mind that it is not this Court's purpose to entertain alternative interpretations of the evidence presented; the test is whether the trial court's finding was clearly erroneous. MCR 2.613(C). The prosecution need not negate every theory consistent with a defendant's innocence, but need only introduce evidence sufficient to convince a reasonable factfinder of the defendant's guilt. *People v Hardiman*, 466 Mich 417, 424; 646 NW2d 158 (2002).

Defendant points out that three police witnesses testified that the events in question took place on the twelfth of July, instead of the eleventh, then that each witness formally recanted and changed testimony in that regard, and argues that this indicates that the police were determined to proceed falsely with this prosecution rather than admit a mistake in suspecting defendant in the first instance. We do not share defendant's cynicism, but instead conclude that a shared minor mistake concerning the date of the crime does not render the rest of that police testimony patently incredible, seriously impeached, or marked by uncertainties. See *People v Lemmon*, 456 Mich 625, 643-644; 576 NW2d 129 (1998).

For these reasons, we reject defendant's claim of error.

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ Michael J. Talbot  
/s/ Douglas B. Shapiro